JD—07—06
Ashland, KY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

I.C.E. ELECTRIC, INC.,
EARLY WARNING SECURITY, INC.

and Case 9—CA—38707

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION 317, AFL—CIO

EAST COAST SERVICES, INC.

and Case 9—CA—40399

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION 575, AFL—CIO

and

CHRISTOPHER LEE HUTCHINSON, AN INDIVIDUAL

and

ERIN THOMAS HUTCHINSON, AN INDIVIDUAL

Naima R. Clarke, Esq., for the General Counsel.
James W. Lyon, Jr., Esq., of Greenup, Kentucky,
for Respondents, Christopher Hutchinson and
Erin Thomas Hutchinson.
Jim Gillette, of Huntington, West Virginia, for
Charging Party, Local 317.
William J. Tipton, of Portsmouth, Ohio, for
Charging Party, Local 575.

DECISION

Statement of the Case

PAUL BUXBAUM, Administrative Law Judge. On November 12, 2004, the Regional Director filed a compliance specification and notice of hearing in this case. The hearing was held in Ashland, Kentucky, on January 10, 2006.

As the procedural history of this case is both significant and somewhat lengthy, it is appropriate to begin by providing a summary of it.

A. The Procedural History.

This matter commenced on August 21, 2001, with the filing of a charge by Local 317 against I.C.E. Electric, Inc., and Early Warning Security, Inc. On October 25, 2001, the General Counsel issued a complaint and compliance specification against those respondents, alleging that they were a single employer and that they had violated Section 8(a)(3) and (1) of the Act by unlawfully refusing to hire and consider for hire certain individuals. No response having been filed, the General Counsel moved for entry of a default judgment.

On June 11, 2003, the Board issued a decision and order granting the motion for default judgment. (339 NLRB 247) It found that the two companies were a single employer within the meaning of the Act and that they had unlawfully failed to hire or consider for hire five named individuals. The Board, noting that the respondents had ceased operations on May 4, 2001, ordered that in the event operations resumed, the respondents must provide instatement for Ronald D. Cole, Warren G. Spry, and Charles N. Taylor. It also directed that, in the event operations resumed, the respondents must provide nondiscriminatory consideration for the employment of Scott E. Burnett and Kevin W. Mullins. The Board's order required that respondents make Cole and Spry whole for lost earnings in the amounts of $816.12 and $2,565.50 respectively.[1] The Board also directed the respondents to mail a notice to the Union and to the last known addresses of its employees.

On July 29 and October 21, 2003, Local 575 filed a charge and an amended charge against East Coast Services, Inc. On October 28, 2003, the General Counsel issued a complaint alleging that East Coast had engaged in a series of coercive acts against its employees in violation of Section 8(a)(1) of the Act and had unlawfully terminated an employee, James Shope, and transferred another employee, Becky Reffitt, in violation of Section 8(a)(3) and (1) of the Act. Once again, no response having been filed by the respondent, the General Counsel moved for entry of a default judgment.

On January 15, 2004, the Board issued a decision and order granting the motion for default judgment. (341 NLRB No. 2) It found that the alleged violations of the Act had been committed and issued a cease and desist order. It also ordered affirmative relief consisting of full reinstatement for Shope and Reffitt and a make whole remedy for their loss of earnings and other benefits. East Coast was also ordered to post an appropriate notice.

On November 10, 2003, the United States Court of Appeals for the Sixth Circuit entered its judgment fully enforcing the Board's order against I.C.E. Electric and Early Warning Security in Case 9—CA—38707. Its mandate issued on January 5, 2004. Similarly, on April 22, 2004, the United States Court of Appeals for the Fourth Circuit issued its judgment and mandate enforcing the Board's order against East Coast in Case 9—CA—40399.

In November 2004, the Regional Director issued a compliance specification, notice of hearing, and order consolidating these cases. (GC Exhs. 1(k) and 1(m).) The compliance specification alleged that Respondents, I.C.E. Electric, Inc., and East Coast Services, Inc., constitute a single employer within the meaning of the Act and are jointly and severally liable for remedying the unfair labor practices described in the Board's two previously discussed decisions and orders. The compliance specification further alleged that Christopher Lee Hutchinson and Erin Thomas Hutchinson "failed to maintain distinct corporate and individual

[1] The Board found that Taylor had not yet suffered any compensable loss of earnings or benefits.

identities with Respondents I.C.E. and East Coast . . . [in order to] avoid liability for, and evade the legal obligations of, the affirmative provisions of the Board's Orders." (GC Exh. 1(k), at p. 4.) The compliance specification sought an order finding the individual respondents "personally and individually liable for remedying the unfair labor practices described in the Board's Orders, including reinstatement and the payment of backpay, benefits, interest, and other relief." (GC Exh. 1(k), at p. 4.) The specification set forth the method of determination of backpay with specific calculations attached as appendices. As to Cole and Spry, it asserted that the backpay amounts were $5,488 and $8,805, respectively.[2] As to Taylor, the backpay amount was calculated at $5,344. Finally, the specification determined that Shope's backpay was $13,200 and that Reffitt's backpay amounted to $14,516. (GC Exh. 1(k), at p. 6.)

The individual respondents, through their counsel, filed an answer to the compliance specification on November 29, 2004. (GC Exh. 1(o).) Their answer denied some of the material allegations of the compliance specification. In contrast, none of the named corporations filed a response to the specification. In consequence, the General Counsel filed a motion for partial default judgment against Respondents I.C.E. Electric, Inc., and East Coast Services, Inc.

On September 16, 2005, the Board issued a supplemental decision and order granting the motion for entry of default judgment against the corporate respondents. (345 NLRB No. 61) Accordingly, the Board, treating the corporate respondents as a single employer, ordered I.C.E. Electric, Inc., Early Warning Security, Inc., and East Coast Services, Inc., to pay the amounts sought in backpay for the five named individuals.[3]

More directly pertinent to the matter before me, the Board addressed the status of the compliance specification's allegations against the individual respondents in two important respects. First, the Board noted that, while their answer to the specification disputed the allegation that they were personally and individually liable, it "did not dispute the accuracy of the backpay amounts set forth in the compliance specification or the premises on which they are based." 345 NLRB No. 61, slip op. at p. 2. Second, the Board held that, "Respondents Christopher Lee Hutchinson and Erin Thomas Hutchinson may litigate in a separate proceeding whether they are personally liable for the backpay amounts owed." 345 NLRB No. 61, slip op. at fn. 4. Of course, this is the proceeding referred to by the Board.

B. Events at the Hearing.

Mr. and Mrs. Hutchinson appeared at the hearing before me on January 10, 2006.[4] They were accompanied by their counsel. On their behalf, he requested permission to withdraw their answer to the compliance specification. (Tr. 8.) This motion was unopposed, and I granted it.[5] At that point, counsel for the General Counsel moved for entry of default judgment

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[2] These sums included the $816.12 and $2,565.50, respectively, that had been previously ordered by the Board in its decision in Case 9—CA—38707. (See, 339 NLRB at 250.)

[3] The Board, however, adjusted the totals for Cole and Spry by deducting $816.12 and $2,565.50, respectively, because these amounts had already been included in a court-enforced order. The Board noted that, "it would not be appropriate to order payment a second time." 345 NLRB No. 61, slip op. at fn. 4.

[4] The individual respondents are married to each other.

[5] Before acting on the motion, I conducted voir dire of both individual respondents to determine whether they understood the nature of their attorney's request and concurred in it. (Tr. 8-10.) I am satisfied that their consent was both voluntarily and intelligently rendered.

against the individual respondents.[6] (Tr. 10.) This motion was also unopposed.

Having considered the entire record, I make the following,

Ruling on Motion for Partial Default Judgment

Section 102.56(c) of the Board's Rules and Regulations provides that, in the event a respondent does not submit an answer to the compliance specification, the Board, "with or without taking evidence in support of the allegations of the specification," may find the specification to be true and enter an appropriate order. I have concluded that such is the proper course in this case. As a result, I grant the General Counsel's motion for entry of default judgment against Christopher Lee Hutchinson and Erin Thomas Hutchinson, and make the following

Findings of Fact

As alleged in paragraph 4 of the compliance specification, I find that Christopher Lee Hutchinson and Erin Thomas Hutchinson have, at all material times, been doing business as Respondents I.C.E. Electric, Inc., and East Coast Services, Inc., as well as, a variety of other business entities.[7] As described in paragraph 5 of the specification, I further find that the individual respondents have, at all material times, failed to maintain distinct corporate and individual identities with I.C.E. Electric, Inc., East Coast Services, Inc., and their other business entities. Specifically, I find that, as alleged in paragraph 5 of the specification, they have failed to operate these businesses as entities separate from themselves, commingled assets, failed to maintain adequate business records, used the corporate form as a mere shell instrumentality and conduit of themselves, disregarded corporate legal formalities, and failed to maintain a distinct and separate relationship between themselves and the related entities.[8]

Conclusions of Law

By engaging in the just-described conduct, Christopher Lee Hutchinson and Erin Thomas Hutchinson have misused the corporate form in order to avoid liability for, and evade the legal obligations of, the affirmative provisions of the Board's orders. As a result, they are individually and personally liable for remedying the unfair labor practices described in the Board's prior orders.[9]

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[6] Section 102.35(8) of the Board's Rules and Regulations authorizes the assigned administrative law judge to dispose of such a motion. See also, *Calyer Architectural Woodworking Corp.,* 338 NLRB 315 (2002), at fn. 1.

[7] A nonexhaustive list of the Hutchinson's other business entities is contained in paragraph 4 of the specification. (GC Exh. 1(k), at pages 3-4.)

[8] It is not necessary to make findings of fact regarding the amounts of backpay alleged to be owed. The Board's prior decision noted that the Hutchinsons did not dispute the accuracy of those calculations in the specification and its appendices and the Board adopted them. It also held that the only remaining issue relating to the individual respondents was the question of their personal liability for those amounts. Furthermore, the individual respondents did not dispute the amounts at issue during the hearing.

[9] Although the General Counsel's allegations are not disputed, I have independently considered whether to pierce the corporate veil in the manner requested. Applying the Board's standard set forth in *White Oak Coal Co.,* 318 NLRB 732 (1995), enf'd. mem. 81 F.3d 150 (4th Cir. 1996), I conclude that its two-pronged test is met. It is undisputed that the Hutchinsons

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Remedy

I note that the Board's order directed against the corporate respondents in this case is limited to the award of the specified sums of backpay, plus interest. At the hearing, counsel for the General Counsel sought broader relief against the individual respondents. (Tr. 12.)

Upon consideration, I agree with the General Counsel's position. Having found the individual respondents to be legally responsible for the unfair labor practices established in this case, it is appropriate to provide a complete remedial order. By contrast, the Board did not need to issue a comprehensive remedial order against the corporate respondents since this had already been accomplished in its orders issued prior to these compliance proceedings and enforced by the Courts of Appeals. There is no procedural unfairness in the imposition of complete relief since the compliance specification made specific reference to the individual respondents' personal liability for a complete remedy, including "reinstatement" and such "other relief as required by the Board's [prior] Orders." (GC Exh. 1(k), at p. 4.) Thus, respondents were fully notified of the scope of the potential relief requested. By withdrawing their answer to the compliance specification, the individual respondents have waived any objection to the imposition of a remedial order against them that is consistent with the provisions of the previous orders issued by the Board against their improperly commingled corporate entities. I conclude that the issuance of such a comprehensive order is necessary to remedy the unfair labor practices and effectuate the purposes of the Act.

One technical issue requires further discussion. In its order directed against the corporate respondents in the compliance portion of this case, the Board declined the General Counsel's request to include an award of the sums of $816.12 to Cole and $2,565.50 to Spry. It did so because these amounts had already been awarded by the terms of a court-enforced prior Board order. Counsel for the General Counsel requested that the current order include payment of those amounts to Cole and Spry. I agree with the General Counsel's contention that the situation is materially different regarding the individual respondents. These respondents have not previously been ordered to pay these sums. Having now established their individual liability for the compensation of Cole and Spry for their losses arising from the unfair labor practices, it is appropriate to include payment of these sums in the remedy directed against the individual respondents.[10]

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failed to operate the businesses as separate entities, commingled assets, failed to maintain adequate records, used the corporate entity as a mere shell or conduit, disregarded corporate legal formalities and failed to maintain a distinct and separate relationship between themselves and the related entities. (See, GC Exh. 1(k), paragraph 5.) It is also undisputed that their acts were undertaken in order to perpetuate an inequity, "specifically, to avoid liability for, and evade the legal obligations of the affirmative provisions of the Board's Orders." (GC Exh. 1(k), paragraph 6.) In addition, I note that both of the named individual respondents participated in the corporate respondents' unfair labor practices. The Board has previously found that, at all material times related to the commission of those unfair labor practices, Christopher Hutchinson was the "president/CEO" of I.C.E. Electric, Inc., and the "Treasurer/Supervisor" of East Coast Services, Inc., and that Erin Thomas [Hutchinson] was the "Chief Executive Officer/President" of East Coast Services, Inc. (See, 339 NLRB at 248, and 341 NLRB No. 2, slip op. at p. 1.) The uncontroverted evidence establishes that it is appropriate to pierce the corporate veil in order to prevent the inequity that would arise from the evasion of the Board's prior orders.

[10] Of course, it is not intended that Cole and Spry recover any double payments. Once the sums have been paid by any respondent, they are no longer owed to them by any other

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Having found that, through their control of improperly commingled corporate entities, the individual respondents have engaged in certain unfair labor practices, they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, it is appropriate to order the individual respondents to provide the same relief that the Board has ordered from the corporate respondents. Such relief includes provisions for instatement of Cole, Spry, and Taylor, as well as, reinstatement of Shope and Reffitt. In addition, a refusal to consider remedy is appropriate for Burnett and Mullins.

I further recommend that the Board order the individual respondents to make Cole, Spry, Taylor, Shope, and Reffitt whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay for Shope and Reffitt shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987). Backpay for Cole, Spry, and Taylor shall be computed with interest as prescribed in *New Horizons for the Retarded,* infra, minus any tax withholdings required by Federal and State laws. The respondents shall also be required to remove from their files any and all references to the unlawful failure to hire or consider for hire Cole, Spry, Taylor, Burnett, and Mullins and the unlawful termination of Shope and transfer of Reffitt, and to notify each of them in writing that this has been done and that these adverse actions taken against them will not be used against them in any way.

Noting the status of the business operations of the corporate respondents, the Board directed that they mail appropriate notices to the Union and to the last known addresses of the employees in order to notify them of the outcome of the proceedings. A similar order is appropriate here as it is best designed to provide the employees of the various commingled entities notice of the outcome of the case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

Respondents, Christopher Lee Hutchinson and Erin Thomas Hutchinson, and their agents and representatives, shall

1. Cease and desist from

(a) Failing and refusing to hire or to consider for hire employees because they formed, joined, or assisted the International Brotherhood of Electrical Workers, Local Union 317, AFL—CIO, and engaged in concerted activities, or to discourage employees from engaging in these activities.

(b) Telling employees that employees were fired because of their union activity.

(c) Telling employees that employees would be transferred because of their

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respondent.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

union activity.

(d) Telling employees that union activity would get them fired.

(e) Coercively interrogating employees about their union activities.

(f) Threatening employees with physical harm if they talked to the National Labor Relations Board.

(g) Terminating, transferring, or otherwise discriminating against employees because they support the International Brotherhood of Electrical Workers, Local 575, AFL—CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) In the event the Respondents resume the same or similar business operations, within 14 days thereafter, offer Ronald D. Cole, Warren G. Spry, and Charles N. Taylor instatement to the positions to which they applied for or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges they would have enjoyed absent the discrimination against them.

(b) In the event the Respondents resume the same or similar business operations, within 14 days thereafter, offer James Shope and Becky Reffitt full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) In the event the Respondents resume the same or similar business operations, within 14 days thereafter, place Scott E. Burnett and Kevin W. Mullins in the position they would have been, absent discrimination, for consideration for future openings, consider them for the openings in accord with nondiscriminatory criteria, and notify them, the International Brotherhood of Electrical Workers, Local Union 317, AFL—CIO, and the Regional Director for Region 9, in writing, of future openings in positions for which Burnett and Mullins applied or substantially equivalent positions.

(d) Make Ronald D. Cole, Warren G. Spry, Charles N. Taylor, James Shope, and Becky Reffitt whole for any loss of earnings and other benefits suffered as a result of the discrimination against them by paying them the amounts set forth below, plus interest and minus tax withholdings required by Federal and State laws, as set forth in the remedy section of this decision.

Individual	Amount
Ronald D. Cole	$ 5,488
Warren G. Spry	$ 8,805
Charles N. Taylor	$ 5,344
James Shope	$13,200
Becky Reffitt	$14,516

(e) Within 14 days from the date of this Order, remove from their files any and all references to the unlawful failure and refusal to hire or consider for hire Ronald C. Cole, Warren G. Spry, Charles N. Taylor, Scott E. Burnett, and Kevin W. Mullins, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(f) Within 14 days from the date of this Order, remove from their files any and all references to the unlawful termination of James Shope and transfer of Becky Reffitt, and within 3 days thereafter, notify them in writing that this has been done, and that the unlawful termination or transfer will not be used against them in any way.

(g) Preserve and, within 14 days of a request, or such reasonable time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(h) Within 14 days after service by the Region, duplicate and mail, at their own expense and after being signed by the Respondents or their authorized representative, a copy of the attached notice marked "Appendix"[12] to Local Union 317 and Local Union 575 of the International Brotherhood of Electrical Workers, AFL—CIO and to all employees who have been employed by any of the Respondents at any time since March 21, 2001.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of the Respondents or their responsible representative on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. February 10, 2006

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Paul Buxbaum
Administrative Law Judge

[12] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

JD—07—06
Ashland, KY

APPENDIX

NOTICE TO EMPLOYEES

Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to hire or to consider for hire employees because they form, join or assist the International Brotherhood of Electrical Workers, Local Union 317, AFL—CIO, and engage in concerted activities, or to discourage employees from engaging in these activities.

WE WILL NOT tell employees that employees were fired because of their union activity.

WE WILL NOT tell employees that employees would be transferred because of their union activity.

WE WILL NOT coercively ask employees if they are members of a union.

WE WILL NOT tell employees that union activity would get them fired.

WE WILL NOT coercively interrogate employees about their union activities.

WE WILL NOT threaten employees with physical harm if they talked to the National Labor Relations Board.

WE WILL NOT terminate, transfer, or otherwise discriminate against employees because they support the International Brotherhood of Electrical Workers, Local Union 575, AFL—CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal labor law.

WE WILL, in the event we resume the same or similar business operations, within 14 days thereafter, offer Ronald D. Cole, Warren G. Spry, and Charles N. Taylor instatement to the positions to which they applied or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights or privileges they would have enjoyed absent the discrimination against them.

WE WILL make Ronald D. Cole, Warren G. Spry, and Charles N. Taylor whole for any loss of earnings and other benefits suffered as a result of the discrimination against them by paying them the amounts set forth in the Board's order, plus interest and minus tax withholdings required by Federal and State laws.

WE WILL, in the event we resume the same or similar business operations, within 14 days thereafter, place Scott E. Burnett and Kevin W. Mullins in the position they would have been, absent discrimination, for consideration for future openings, consider them for the openings in accord with nondiscriminatory criteria, and notify them, the International Brotherhood of Electrical Workers, Local Union 317, AFL—CIO, and the Regional Director for Region 9, in writing, of future openings in positions for which Burnett and Mullins applied or substantially equivalent positions.

WE WILL, within 14 days from the date of the Board's order, remove from our files any and all references to the unlawful failure and refusal to hire or to consider for hire Ronald C. Cole, Warren G. Spry, Charles N. Taylor, Scott E. Burnett, and Kevin W. Mullins, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

WE WILL, in the event we resume the same or similar business operations, within 14 days thereafter, offer James Shope and Becky Reffitt full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make James Shope and Becky Reffitt whole for any loss of earnings and other benefits suffered as a result of their unlawful termination and transfer, respectively, with interest.

WE WILL, within 14 days from the date of the Board's order, remove from our files any and all references to the unlawful termination of James Shope and transfer of Becky Reffitt, and WE

WILL, within 3 days thereafter, notify them in writing that this has been done and that the unlawful termination or transfer will not be used against them in any way.

_____
Christopher Lee Hutchinson

Dated _____ By _____
(Representative) (Title)

_____
Erin Thomas Hutchinson

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

550 Main Street, Federal Office Building, Room 3003
Cincinnati, Ohio 45202-3271
Hours: 8:30 a.m. to 5 p.m.
513-684-3686.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 513-684-3750.